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CITATIONS

372502—56——1

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 616

THE LEITER MINERALS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 262–276) is reported in 127 F. Supp. 439. The opinion of the court of appeals (R. 299–305) is reported in 224 F. 2d 381 and also appears at Pet. App. 19–24.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1955 (R. 306). A timely petition for rehearing was denied on October 14, 1955 (R. 315). The petition for a writ of certiorari was filed on January 9, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Petitioner, The Leiter Minerals, Inc., filed suit in the state court for Plaquemines Parish, Louisiana, against a lessee of the United States and against The California Company, which has an operating agreement with the Government's lessee, to establish its asserted title to the minerals and mineral rights in lands owned by the United States. Thereafter, the United States brought its own action in the federal court against petitioner to quiet its title to the minerals and mineral rights, and, upon application, the federal court, finding that irreparable damage would otherwise result, issued a preliminary injunction restraining further prosecution of the state court proceedings pending determination of the federal court action. The question presented is whether the federal district court had jurisdiction to issue such an injunction.

STATUTE INVOLVED

28 U. S. C. 2283 provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT

Pursuant to a contract of purchase and sale of March 1935, between the United States and the executors and trustees of the Estate of Joseph

Leiter (R. 109–117), Thomas Leiter, as heir of Joseph Leiter, in December 1938 conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana (R. 205–213). The deed contained a mineral reservation (R. 211–212) identical to one contained in the 1935 agreement (R. 112–113), which may be summarized as follows: The grantor reserved until April 1, 1945, the right to mine and remove all valuable minerals. It was further provided that on April 1, 1945, or at the termination of any extension resulting from actual mineral operations, "the right to mine shall terminate, and complete fee in the land [shall] become vested in the United States." No mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the petitioner or anyone acting under or through them (R. 263).

In March 1949, the United States issued oil and gas leases covering portions of the property to Frank J. Lobrano and to Allen L. Lobrano (R. 132–191). The Lobranos granted the operating rights under these leases to The California Company (R. 47–76). That company has drilled 80 producing wells at an average cost of $160,000 each (R. 42, 263), and is producing oil and gas in large quantities. The United States has already received more than $3,500,000 in royalties (R. 263). Any interruption in the operation of these

wells would cause irreparable damage to the United States (R. 263; see also R. 40–44, Pet. App. 24).

In August 1953, petitioner commenced an action against The California Company and Allen J. Lobrano in the Twenty-fifth Judicial District for the Parish of Plaquemines, Louisiana. Its petition or complaint (R. 192–204) asserted (R. 193) that it was the owner of "All of the oil, gas and other minerals, and all of the oil, gas and mineral rights in, on or that may be under" the lands conveyed to the United States by Leiter. Petitioner claimed title (R. 199) by virtue of the mineral reservation in the deed and purported conveyances from Leiter. The complaint filed in the state court also alleged (R. 201):

> * * * that the rights of [petitioner] sued upon herein in and to all the oil, gas and other minerals under the lands described * * * are imprescriptible by virtue of Act 315 of the Louisiana Legislature of 1940 (R. S. 9:5806), and that [petitioner] now owns all of the oil, gas and other minerals, and is the owner of all the oil, gas and mineral rights, in, on and under said lands.

The prayer of that complaint (R. 202–203) was for a judgment against The California Company and Lobrano "recognizing" petitioner as the owner of the minerals and mineral rights involved and declaring that as such owner it was

entitled to full and undisturbed possession thereof, and "ordering the defendants * * * to deliver possession of said property to" petitioner. There was a further prayer for an accounting of the minerals removed and a consequent judgment for their value.

In March 1954, the United States commenced the present action in the United States District Court for the Eastern District of Louisana against petitioner and named as additional parties defendant Lobrano and The California Company. Its complaint (R. 2–19), after stating the substance of the foregoing, averred (R. 16) that the state court suit—

> is an attempt by [petitioner] to have the title of the United States of America adjudicated upon directly in that proceeding and to wrest possession of the property away from the United States therein, all to the permanent and irreparable injury and detriment of the United States. The mere pendency of said suit constitutes a threat against, and an interference with, the substantive rights of the United States in the property.

The complaint prayed (R. 18–19), in substance, for a judgment (1) quieting the Government's title to the minerals and mineral rights, (2) canceling, as clouds on that title, the instruments by virtue of which petitioner claimed title, and (3) granting preliminary and permanent in-

junctions against prosecution of the state court suit.

On April 3, 1954, the United States applied for a temporary restraining order against prosecution of the state court suit (R. 22–23). On the same day, the district court granted a 10-day restraining order (R. 33) which thereafter was indefinitely extended (R. 34–35), and on April 6, 1954, petitioner moved to dismiss this suit or to stay proceedings until the state court suit had been terminated, on the ground that the state court had previously assumed jurisdiction "of this controversy" and of the property involved (R. 36–37). A hearing on these motions was held in May 1954, at which hearing evidence establishing the foregoing facts was introduced (R. 77–261). Thereafter, the district court, finding that irreparable damage to the property of the United States would result, filed its opinion (R. 262–276) and order restraining further prosecution of the state court action pending disposition of the instant case (R. 277–278). On appeal this order was affirmed (R. 306).

ARGUMENT

As stated by the court of appeals (Pet. App. 23), "Obviously the controversy as to title is between the appellant [petitioner] and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party."

Petitioner nowhere questions this statement. On the contrary, it expressly states (Pet. 3) that the "subsidiary" questions upon which this case turns are whether the federal district court below "has exclusive jurisdiction to determine the title of the United States to real property" or whether the United States is required to try its title in the state court proceeding.

Jurisdiction to try the Government's title can exist only in that court which has jurisdiction of the subject matter and of the United States. 28 U. S. C. 1345 confers original jurisdiction on United States District Courts of all civil actions commenced by the United States as plaintiff. Consequently, when the United States instituted the instant action in the federal district court to try the issue of its title, that court, being the one and only court having jurisdiction of the United States and of the subject matter, acquired exclusive jurisdiction. As stated by the district court (R. 272), "All the parties necessary to make this determination are before this court. The United States, an indispensable party insofar as the state proceedings seek to adjudicate title to the property, is not before the state court." This exclusive jurisdiction of the district court is not, of course, affected by the circumstance that on the merits a question of state law may be involved. *Markham* v. *Allen*, 326 U. S. 490, 495. Accordingly, petitioner's assertion (Pet. 13–14) that a

question of Louisiana law is involved is irrelevant to the question in hand.[1]

It follows, as the courts below have held, that the state court, not having jurisdiction of the United States, did not acquire jurisdiction to determine the title of the United States. This Court has uniformly held that where the title of the United States is the issue, or where a suit is against federal property, the United States is an indispensable party, and that the suit, while nominally against federal officers or agents, is in fact against the United States, and must be dismissed for lack of jurisdiction, absent the consent of Congress to the action. *Stanley* v. *Schwalby*, 162 U. S. 255; *Minnesota* v. *United States*, 305 U. S. 382; *Carr* v. *United States*, 98 U. S. 433; *United States* v. *Shaw*, 309 U. S. 495; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506; *Louisiana* v. *Garfield*, 211 U. S. 70; *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682;

[1] While the merits of this case are not here involved, we deem it appropriate to point out that the Government's title to the minerals is not founded upon Louisiana law, but on an express contract of the United States and resulting deed, and that the construction of that contract, and the title which it creates, "present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County*, 322 U. S. 174, 183. There may also be constitutional questions in regard to the validity and effect of the Louisiana statute.

Mine Safety Appliances Co. v. *Forrestal*, 326 U. S. 371.[2]

The above-cited cases, of course, dispose of petitioner's basic contention that by the mere filing of its action in the state court it can compel the United States to submit itself as a defendant and its property to the jurisdiction of that court. Since Congressional consent is the *sine qua non*, and since it is lacking here, not even the Attorney General of the United States has authority to bring the Government in as a party defendant in the state court suit. *Stanley* v. *Schwalby*, 162 U. S. 255, 270; *Minnesota* v. *United States*, 305 U. S. 382, 389.

The federal district court having exclusive jurisdiction, and the state court having none, and both courts below having found (R. 272, Pet. App. 24) that irreparable damage to the United States would result if its lessees should be ousted of possession, the district court's stay of proceedings in the state court to preserve the *status quo* was not only appropriate, but was clearly not prohibited by 22 U. S. C. 2283, since it is unques-

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[2] Petitioner's attempt (pp. 11–12) to dispose of these cases on the assertion that the "priority-of-jurisdiction" rule was not there involved is unavailing. Obviously these decisions apply to petitioner's Louisiana proceeding, as well as to any other suit wherein an attempt is made to adjudicate the Government's title to its property without its consent.

tionably "necessary in aid of its [the district court's] jurisdiction, or to protect or effectuate its judgments." In similar situations the federal courts have hitherto followed this practice to protect the Government's interest. *United States* v. *McIntosh,* 57 F. 2d 573, 576–578 (E. D. Va.); *United States* v. *Cain,* 72 F. Supp. 897, 899 (W. D. Mich.); *United States* v. *Phillips,* 33 F. Supp. 261 (N. D. Okla.); *Brown* v. *Wright,* 137 F. 2d 484, 488 (C. A. 4); *United States* v. *Taylor's Oak Ridge Corp.,* 89 F. Supp. 28 (E. D. Tenn.); *United States* v. *Prince William County,* 9 F. Supp. 219 (E. D. Va.), affirmed, 79 F. 2d 1007, (C. A. 4), certiorari denied, 297 U. S. 714; *United States* v. *Inaba,* 291 Fed. 416, 417 (E. D. Wash.).

2. Petitioner makes no serious attempt to meet the conclusion of both courts below that the federal district court has exclusive jurisdiction, and it makes no pretense at showing that this conclusion is not fully supported by the decisions of this Court relied on below. Instead, it largely ignores those holdings and asserts that, under the rule of comity between courts, the United States is remitted to the state court proceeding. But, as the court of appeals observed (Pet. App. 24), "The rule as to *in rem* actions which appellant invokes is predicated upon principles of comity between State and Federal courts of concurrent jurisdiction, and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine

the title of the United States to the minerals and mineral rights claimed by the appellant." And as pointed out in the very similar case of *United States* v. *McIntosh*, 57 F. 2d 573, 577 (E. D. Va.), the real purpose of the anti-injunction statute, *i. e.*, avoidance of conflict between courts, would be defeated in cases of exclusive federal jurisdiction if prosecution of the state court proceeding were not stayed, "because the federal case *must* go on * * * and, if the state court case also goes on, confusion and possible clashes might unfortunately occur."

The principal authority invoked by petitioner (Pet. 8–12), *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, was, of course, carefully considered by both courts below (R. 273–275, Pet. App. 23–24) and held not to support petitioner's position. There, the subject matter of the action was a privately owned fund constituting assets of three dissolved Russian insurance companies. The state court had in 1925 appointed a liquidator who deposited the funds in banks designated by the court and the funds were held subject to appropriate orders of that court for distribution to creditors. In 1933 the Soviet Government assigned its interest in the funds to the United States, and the federal government thereafter sued in the federal court to establish title to and obtain possession of the funds. This Court affirmed a dismissal upon the ground that the state court had first acquired jurisdiction and

control over the entire fund and that continuation of such control was necessary to protect the rights of claimants in the state court proceeding.

The conclusion there was based on facts not present here. There, a true *res* was validly under the control of the state court at a time when the United States had not the slightest interest in it or claim to it, and the Government acquired no interest until eight years later. And the interest it claimed was adverse to those of the other claimants to the fund, so that its relation to the state court suit was essentially that of a plaintiff rather than that of a defendant. Here, title to and possession of the property has been in the United States since 1938, 15 years before petitioner filed its state court action, and the Government's claim of title to the minerals matured eight years before such action was instituted. Furthermore, the rights of the defendants in the state court suit, who are the Government's lessees, depend on the Government's title, and the Government could not be properly considered as a plaintiff.

Another obstacle to federal jurisdiction, relied upon by this Court in the *Bank of New York* case (296 U. S., p. 480), was that other claimants were already before the state court, were entitled to be heard, were indispensable parties to any proceeding for disposition of the funds, and were not parties to the federal court action. The reverse is true here, since the federal court is the only court having jurisdiction of all parties. See *Markham*

v. *Allen,* 326 U. S. 490. It is plain that a ruling that the acquisition by the United States of a *claim* to a fund eight years after the fund was validly in the control of the state court and in process of being adjudicated could not operate to oust the state court of jurisdiction lends no support to petitioner's contention. Requiring the Government, without its consent, to litigate, as a defendant in a state court, the title to its property, with a corresponding denial of its right to litigate that title in its own courts as a party plaintiff, is not justified on any basis, and is not, we submit, supported by anything said or decided in the *Bank of New York* case. Cf. *Minnesota* v. *United States,* 305 U. S. 382, 388.

CONCLUSION

The decision of the court below is correct. There are no conflicts of decision, and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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